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February 2, 2010

VIA ELECTRONIC FILING

Chief Magistrate Judge Maria-Elena James
U.S.D.C – Northern District of California
Courtroom B, 15th Floor
450 Golden Gate Ave.
San Francisco, California 94102

Re: *Orville Meaux v. Northwest Airlines, Inc.*
USDC Case Nos. C 04-04444 CW and C 09-02447 CW



Dear Chief Magistrate Judge Maria-Elena James:

Defendant Northwest is in receipt of this Court's January 28, 2010 Order and respectfully requests that the Court modify its procedure regarding non-party discovery and permit Northwest to begin civil contempt proceedings against non-parties in violation of Federal Rules of Civil Procedure Rule 45(d) within eleven days from the Order. Northwest's ability to defend against Plaintiff's emotional distress claim will be unduly prejudiced if it is only permitted to initiate civil contempt proceedings *less than a month* prior to the parties' March 15, 2010 discovery-cut off date. The subpoenaed documents are critical to determining remaining discovery issues and to the depositions of Plaintiff's treating physicians, scheduled to begin in early February 2010, and Northwest's repeated meet and confer efforts have been completely futile to date. Therefore, Northwest respectfully requests that this Court modify its prior ruling, and permit Northwest to begin civil contempt proceedings against non-parties in violation of Federal Rules of Civil Procedure Rule 45(d) on February 8, 2010.¹

Specifically, Defendant requests to begin civil contempt proceedings pursuant to Federal Rules of Civil Procedure Rule 45(e) against: Esteban Daniel Lovato, M.D., Robert Cavette Scott III,

¹ Please note that Northwest served this Court's January 28, 2010 Order and Discovery Standing Order on Dr. Lovato, Dr. Scott, Dr. Hare, UnitedHealthcare, and Mr. Gholston on January 29, 2010. Declaration of Stacey Mobley ("Mobley Decl."), ¶ 7. Northwest will continue to meet and confer with non-parties to secure compliance.

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M.D., Nathan Hare, Ph.D., UnitedHealthcare, and Jarre' Andrew J. Gholston.² Defendants properly served a subpoenas *duces tecum* upon the above non-parties. Mobley Decl., ¶¶ 2-6. Neither the third parties nor Plaintiff objected to these subpoenas or sought a protective order. Mobley Decl., ¶¶ 2-6. The non-parties did not produce any subpoenaed documents or attest that they were not in custody of such documents by their statutory deadline. Mobley Decl., ¶¶ 2-6. Defense counsel has sent multiple meet and confer letters and made numerous phone calls to each non-party in an effort to secure compliance. Mobley Decl., ¶¶ 2-6; Declaration of Stephen Stellar, ¶¶ 1-2. After, in some cases, months of defense counsel's unsuccessful meet and confer efforts, the non-parties have either represented that they are still in the process of locating the subpoenaed documents, or have not responded at all. Mobley Decl., ¶¶ 2-6.

Thus, to secure necessary discovery regarding Plaintiff's emotional distress allegations prior to the pending discovery cut-off deadline, and to be able to use those documents in impending depositions, Northwest requests that the Court permit Northwest to begin civil contempt proceedings against Dr. Lovato, Dr. Scott, Dr. Hare, UnitedHealthcare, and Mr. Gholston on February 8, 2010.

Please note that I have attached the declarations of Stacey Mobley and Stephen Stellar to this letter to attest to Northwest's proper service of the subpoenas at issue, third parties' failure to produce documents pursuant to the subpoenas, and defense counsel's meet and confer efforts to obtain the documents without Court intervention. I also have personally made numerous telephone calls to Dr. Hare and offered to arrange a copying service for Mr. Meaux's records, but Dr. Hare still has not assured Northwest that the records will be produced, or when they will be produced.

Please let me know if I can assist the Court with any additional information or if the Court desires to schedule a telephonic conference to address the instant matter.

Sincerely,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.



Linda S. Goldman

² In Northwest's letter of January 21, 2010, Northwest only sought to initiate civil contempt proceedings against Dr. Lovato and Dr. Scott. Since Northwest's January 21st letter, it has become necessary for Northwest to seek similar relief against Dr. Hare and UnitedHealthcare to obtain Plaintiff's medical records, and Mr. Gholston to secure records pertaining to income and business ventures involving Plaintiff. As set forth in the declaration of Stacey Mobley, none of these non-parties have complied with Federal Rules of Civil Procedure section 45(d), or properly responded to defense counsel's meet and confer efforts.